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C H A N C E**

PREPARING FOR THE 2020 AGM - following the implementation of the shareholders' rights directive in the Netherlands

Today, Friday 29 November, it was announced that the law implementing the revised shareholders' rights directive will for the majority of its provisions be effective as of 1 December 2019. In this briefing, which is a follow-up to [our publication on this topic of earlier in November 2019](#), we have listed the various actions that may be relevant to your company and the preparations for your 2020 AGM.

We will reach out to discuss how we can assist you with relevant action points, whether by reviewing your existing remuneration policy, providing you with template documents for your remuneration report or internal policy on dealing with related party transactions etc.

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New remuneration policy - for listed

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companies

As soon as possible prior to convocation of 2020 AGM

The remuneration policy should be brought in line with the new law in order for it to be adopted by the AGM with a $\frac{3}{4}$ majority at the AGM in 2020 at the latest.

Concrete steps:

Well before convocation

- Prepare a proposal for the revised remuneration policy to reflect the new law;
- Consult the relevant works council, if any, on the proposed new remuneration policy (this 'advice' replaces the works council's 'right to speak' (*spreekrecht*));
- Consider proposing an amendment to the articles of association if you want a lower majority than the $\frac{3}{4}$ majority for the adoption of the remuneration policy in the AGM. To this end the articles will need to explicitly provide for a lower threshold as regards decisions on the remuneration policy; a general reference to decision-making by absolute majority, will not be enough.

When publishing convocation notice

- Place on the agenda of the convocation notice (as voting points):
 - the proposed amendment of the company's articles of association (if desired);
 - the adoption of the proposed new remuneration policy and the works council's advice (including a written explanation for the non-adherence to the advice, if and when relevant).

Immediately after 2020 AGM

- Publish the remuneration policy on the company's website, specifying the date and the outcome of the shareholders' vote.

Note: if the existing remuneration policy is already compliant with the new law, the remuneration policy will in any event need to be submitted to the AGM for adoption once the existing remuneration policy has been effective for four years.

Draw up remuneration report - for listed companies

As soon as possible prior to convocation of 2020 AGM

A remuneration report relating to both the management board members and the supervisory board members (or of the members of the one-tier board) should be drawn up in accordance with new law and be presented at the AGM for an advisory vote of the shareholders.



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Concrete steps:

Well before convocation

- Company to draw up a draft remuneration report;
- Have it reviewed by the company's (external) auditor for compliance with the new law;

When publishing convocation notice

- Place on the agenda of the convocation notice (for an advisory vote):
 - the presentation of the remuneration report;

After the 2020 AGM

- Publish the remuneration report on the company's website.

Note: as of 1 December 2019, listed companies are exempted from the requirement:

- to provide information on the remuneration in the explanation to the annual accounts;
- to report in the director's report (*bestuursverslag*) on the way the remuneration policy has been executed in the past financial year.

The reporting obligations pursuant to the Corporate Governance Code remain applicable, meaning that on top of the topics to be addressed in the remuneration report pursuant to the new law (and unless the company opts to 'explain' rather than 'comply'), information should be included:

- on the scenario analyses that have been taken into consideration;
- in the event that a current or former management board member receives a severance payment, the reason for this payment.

Related party transactions - for listed companies

Per the date of the relevant qualifying related party transaction after 1 December 2019

A company must make a public announcement (e.g. place on the company's website) when a material related party transaction is entered into. Such a transaction requires the approval of the supervisory board (or of the one-tier board).

Concrete steps:

- Assessment by the supervisory board (or one-tier board) of procedures currently in place in relation to related party transactions;
- Supervisory board (or one-tier board) to confirm and update if required, the internal procedure to assess whether and which transactions qualify as relevant related party transactions under the new rules.

Composition remuneration committee - for listed and non-listed NVs applying the large companies' regime

Immediately per 1 December 2019 and for new appointments per the date of the relevant (extraordinary) (A)GM

Supervisory board members (or non-executive members of the one-tier board) appointed pursuant to the works council's enhanced recommendation right will automatically have a seat in the supervisory board's (or one-tier board's) remuneration committee as from the date the new law becomes effective.

Concrete steps:

- Review the composition of the existing remuneration committee in view of the above requirement. It may be considered to extend the remuneration committee with further members if (one or more) supervisory board members (or the non-executive members of the one-tier board) appointed pursuant to the works council's enhanced recommendation right previously did not yet have a seat in the remuneration committee (and have become a member of the remuneration committee automatically), in view of the best practice provisions of the Corporate Governance Code on the composition of the supervisory board (or one-tier board) committees;
- the supervisory board, one-tier board and remuneration committee regulations will need to be reviewed against the requirements of the new law (e.g. extension of seats in remuneration committee/ automatic appointment in remuneration committee for supervisory board members (or non-executive members of the one-tier board) appointed pursuant to the works council's enhanced recommendation right).

The new rules for listed companies on shareholder identification and transmission of information through cross-border chains of custodians will enter into force on 3 September 2020. This also applies to the right of a shareholder to request the company to provide a confirmation of its registration and the number of votes cast by it.



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